

## **REMARKS**

Applicants request examination on the merits in view of the following remarks.

### **1. Status of the Claims**

Claims 1-25 stand pending. Claims 1-25 are subject to Restriction / Election Requirement.

### **2. Restriction Requirement**

The Office restricts claims 1-25 in to one of the following groups:

- 1) **Group I**, claims 1-23, drawn to an oil or fat composition; or
- 2) **Group II**, claims 24-25, drawn to a food.

### **3. Election of Group I with Traverse**

Applicants elect **Group I** (claims 1-23) **with traverse**.

Traverse in on the following grounds. Unity of invention is “considered in the first place only in relation to the independent claims.” PCT Guidelines, ¶ 10.06. Because the claims of Group II depend from claim 1 in Group I, Groups I and II normally would be examined together under PCT rules. The Office, however, alleges that the claims lack unity of invention, because of alleged anticipation by U.S. Patent No. 5,139,803 (“Haynes”). Applicants respectfully request the Office states grounds for unpatentability over Haynes under 35 U.S.C. §§ 102 or 103, in accord with MPEP § 1893.03(d). Once Applicants establish the presence of a special technical feature that makes a contribution over the cited art, Applicants request withdrawal of the restriction requirement and rejoinder of Groups I and II.

### **4. Species Election Requirement**

The Office further requires the following species elections:

- 1) a single specific phospholipid or one specific mixture of phospholipids (claims 4-13); and
- 2) a single specific LCPUFA compound or one specific mixture of LCPUFA compounds (claims 14-20).

Applicants make the following general remarks on the species election. The Office requires election of “one specific LCPUFA compound or one specific mixture of LCPUFA compounds (e.g. eicosadienoic acid, *arachidonic acid* etc.).” Office Action, page 4, lines 6-7 (emphasis added). For the clarity of the record, Applicants point out that the Office mischaracterizes the LCPUFA species. The recited LCPUFA species in claim 15 include: eicosadienoic acid, eicosatrienoic acid, eicosatetraenoic acid, eicosapentaenoic acid, docosadienoic acid, docosatrienoic acid, docosatetraenoic acid, docosapentaenoic acid, docosahexaenoic acid, tetracosadienoic acid, tetracosatrienoic acid, tetracosatetraenoic acid, tetracosapentaenoic acid, and tetracosahexaenoic acid. Claim 15 does not explicitly recite arachidonic acid. Claim 17, which depends on claim 15, recites arachidonic acid as the LCPUFA supplied by the LCPUFA supply compound. The Office is further directed to the first paragraph, page 16 of the Specification:

Specific examples of such LCPUFA include: eicosadienoic acid; eicosatrienoic acids such as dihomo- $\gamma$ -linolenic acid and mead acid; *eicosatetraenoic acids such as arachidonic acid (AA)*; ... Among these examples, arachidonic acid (AA) and/or docosahexaenoic acid (DHA) are particularly preferable.

(emphasis added). In view of the claims and the description of the Specification, arachidonic acid (20:4  $\omega$ -6) is merely an exemplary eicosatetraenoic acid (20:4). Accordingly, a proper election of LCPUFA species should be from the fourteen (14) LCPUFAs recited in claim 15. See MPEP § 818.03 (“Applicant must make his or her own election; *the examiner will not make the election for the applicant.*”(emphasis added)).

The Office further asserts, “the result must provide a single chemical species and *a single condition or disease to be treated or improved.*” Office Action, page 4, lines 11-12 (emphasis added). For the clarity of the record, Applicants point out that present claims do not recite a condition or disease to be treated or improved. Accordingly, the requirement to elect a condition or disease is unsubstantiated. See MPEP § 818.03.

Finally, the Office alleges that claims 4-13 read on the species of elected phospholipid. Office Action, page 4. This is incorrect. No claim excludes phosphatidylserine, the elected species of phospholipid. Further, the Office cannot withdraw generic claims from consideration by way of a species election. For example, ¶ 10.06 of the PCT Guidelines requires the Office to

determine unity of invention with regard to independent claims *only*<sup>1</sup>. Similarly, all claims 1-25 read on the elected species of LCPUFA, eicosatetraenoic acid, not just claims 14-20, as alleged.

**5. Election of Species with Traverse**

Applicants elect phosphatidylserine with traverse. Claims 1-25 encompass the elected species. Applicants further elect eicosatetraenoic acid with traverse. Claims 1-25 encompass the elected species.

The Office alleges that the above species do not relate to a single general inventive concept, because each chemical species is a distinct chemical which lacks a special technical feature in view of Haynes. Office Action, pages 4-6. For the same reason as noted in Part 3, above, the Office should rejoin the non-elected species, once a special technical feature is defined over the cited art.

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<sup>1</sup> “Unity of invention has to be considered in the first place only in relation to the independent claims in an international and not the dependent claims.”

### **CONCLUSION**

Should the Office have any questions or comments regarding Applicants' amendments or response, please contact Applicants' undersigned representative at (202) 842-8862.

Furthermore, please direct all correspondence to the below-listed address.

In the event that the Office believes that there are fees outstanding in the above-referenced matter and for purposes of maintaining pendency of the application, the Office is authorized to charge the outstanding fees to Deposit Account No. 50-0573. The Office is likewise authorized to credit any overpayment to the same Deposit Account Number.

Respectfully submitted,

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Dated: October 6, 2009

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